

NOTICE OF EXEMPT RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| Article 26 | New Article |
| R18-13-2601 | New Section |
| R18-13-2602 | New Section |
| R18-13-2603 | New Section |
| R18-13-2604 | New Section |
- 2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: Laws 2008, Ch. 291, § 12; A.R.S. §§ 49-104(B)(4) and 49-104(B)(10)
- Implementing statutes: A.R.S. §§ 49-762.03(F), 49-747, 49-855, and 49-863
- Statute or session law authorizing the exemption: Laws 2008, Ch. 291, § 12
- 3. The effective date of the rules:**
- This rulemaking is effective upon the date and time affixed by the Secretary of State upon filing pursuant to A.R.S. § 41-1032(A)(3).

Pursuant to Laws 2008, Ch. 291, § 12, the Arizona Department of Environmental Quality (“the Department”) expects this rulemaking and the fee changes made in this rulemaking will be effective through June 30, 2009, which is the end of the 2008 – 2009 fiscal year. Laws 2008, Ch. 291, § 12 requires that the revenues from this rulemaking not exceed \$600,000.00. The Department believes that exceeding this amount is unlikely. However, the Department will track the revenues from this rulemaking and if it appears likely that the maximum allowed revenues will be exceeded before June 30, 2009, the Department will prepare a rulemaking to repeal this Article.

4. A list of all previous notices appearing in the Register addressing the exempt rule:

None

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Ren Willis-Frances, Executive Consultant

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6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:

a. Summary

Pursuant to Laws 2008, Ch. 291, § 12, this rulemaking raises, for a limited period of time, the Solid Waste Facility Plan Review Fee (A.R.S. § 49-762.03(F)); the Landfill Registration Fees (A.R.S. § 49-747) and the Special Waste Management Fees (A.R.S. § 49-855 and A.R.S. § 49-863), all of which are deposited into the Solid Waste Fee Fund. The amount of the fee increases and the time period for each fee increase are described below.

b. Exempt Rulemaking

Laws 2008, Ch. 291, § 12(D) exempts this rulemaking from the Arizona Administrative Procedures Act at Arizona Revised Statutes, Title 41, Chapter 6, for a period of one year from the effective date of the enabling legislation, which is September 26, 2008. Laws 2008, Ch. 291, § 12(D) states, "The agencies described in subsection A are exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for the purpose of raising fees pursuant to this Section for a period of one year from the effective date of this act."

c. Background

On June 27, 2008, the Governor signed House Bill 2462, entitled “budget reconciliation; budget procedures,” and it was subsequently chaptered as Laws 2008, Ch. 291. This legislation made various changes related to budget procedures within state government necessary to implement the fiscal year 2008 – 2009 state budget. Laws 2008, Ch. 291, § 12 allows certain agency directors, including the Director of the Arizona Department of Environmental Quality (“Director”), to raise fees in fiscal year 2008 – 2009. The legislature set revenue limits for each of the departments; the fees are not to exceed the amounts listed. Specifically, Laws 2008, Ch. 291, § 12(A) states, “Notwithstanding any other law, the director of each of the following agencies may raise fees in fiscal year 2008 – 2009 for services it provides,” and goes on to include the Arizona Department of Environmental Quality. Laws 2008, Ch. 291, § 12(B) states, “It is the intent of the legislature that the additional revenue generated by the fee increases shall not exceed the amounts listed below:” . . . “3. Department of environmental quality - \$600,000.” This rulemaking seeks to implement this session law, as it applies to the fees of the Department’s Waste Programs Division.

d. Effective Date

This rulemaking is effective upon the date and time affixed by the Secretary of State upon filing pursuant to A.R.S. § 41-1032(A)(3). Since Laws 2008, Ch. 291, § 12 authorized raising fees for fiscal year 2008 – 2009, the rule will no longer be effective after the fiscal year ends on June 30, 2009.

e. Fees Impacted

The Waste Programs Division selected specific fees for implementation based on programmatic need. These fees are the Solid Waste Facility Plan Review Fee authorized by A.R.S. § 49-762.03(F) and set forth in A.A.C. R18-13-702(A); the Landfill Registration Fees authorized by A.R.S. § 49-747(C); and the Special Waste Management Fees authorized by A.R.S. § 49-855(C)(2) and A.R.S. § 49-863 and set forth in A.A.C. R18-13-1307(F). All of these fees are deposited into the Solid Waste Fee Fund, established by A.R.S. § 49-881.

f. Plan Review Fees

The Department provides technical review and issues decisions on facility plans, financial assurance demonstrations and amendments for various solid waste facilities. The Department charges fees for these services. This Article temporarily sets the solid waste plan review fee, authorized by A.R.S. § 49-762.03(F), to an hourly rate of \$105.00 per hour. This replaces the hourly rate of \$58.81 set by A.A.C. R18-13-702. This Article also temporarily sets the initial fee at double the amounts set forth in the schedules in A.A.C. R18-13-702(A), and increases the maximum fees that the Department will bill the applicant to triple the amounts set forth in the schedules in A.A.C. R18-13-702(A).

The increased initial fees for solid waste facility plan review apply to all solid waste facility plan review applications received from the effective date of this Article through June 30, 2009. The increased maximum fees apply to charges for solid waste facility plan review services rendered from the effective date of this Article through June 30, 2009. The increased solid waste facility plan review hourly rate applies to plan review services rendered from the effective date of this Article through June 30, 2009.

g. Landfill Registration Fees

This Article temporarily sets the landfill registration fee at double the amounts set forth in A.R.S. § 49-747. Laws 2008, Ch. 291, § 12(A) states, “Notwithstanding any other law, the director of each of the following agencies may raise fees in fiscal year 2008-2009 for services it provides:” The Department of Environmental Quality is among those listed. Because this authority to raise fees is provided “Notwithstanding any other law,” the Director can raise landfill registration fees, for which amounts are currently set by statute.

Landfill registration fees are typically billed in January each year. The fees set forth in this Section apply to landfill registration fees due from the effective date of this Article through June 30, 2009. This is the maximum effective period allowed within the constraints of the effective date of the legislation and the end of the fiscal year. This will maximize the revenues from landfill registration fees.

h. Special Waste Management Fees

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review the study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business and consumer impact:

The requirement for an economic, small business and consumer impact statement is found in Title 41, Chapter 6, Arizona Revised Statutes at A.R.S. § 41-1055. Laws 2008, Ch. 291, § 12(D) states, “The agencies described in subsection A are exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for the purpose of raising fees pursuant to this Section for a period of one year from the effective date of this act.” While this rulemaking is exempt from the requirement for an economic, small business and consumer impact statement, the Department provides the following information pertaining to the economic impact of this rulemaking:

a. Identification of the rulemaking

This rulemaking creates a new Article to temporarily increase the fees that the Department charges for solid waste plan review (as authorized by A.R.S. § 49-762.03(F), and as set forth in A.A.C. R18-13-702); the landfill registration fee (as set forth in A.R.S. § 49-747); and the special waste management fee (as authorized and capped by A.R.S. § 49-855 and as set forth in A.A.C. R18-13-1307(F)).

b. Discussion of economic, small business and consumer impact

The costs associated with this exempt rulemaking result from increased fees charged to owners and operators of Solid Waste and Special Waste Management Facilities for plan review, annual solid waste landfill registration and management of special waste.

According to current Department records, there are approximately 43 operating municipal solid waste landfills, 15 closed or inactive municipal solid waste landfills, 2 medical waste transfer facilities and 4 medical waste treatment facilities that are subject to facility plan approval. Both the open and closed/inactive landfills must update their demonstration of financial assurance annually. The other facilities must update their demonstrations triennially. These will pay increased plan review fees.

According to current Department records, there are 54 solid waste landfills that must update their annual registrations. These will pay increased annual registration fees.

According to current Department records, there are approximately 14 special waste treatment / processing facilities that will be subject to increased fees. In addition, any of the approximately 579 special waste generators and 127 special waste transporters that take special waste to an in-state facility that is not under the Department's jurisdiction would also pay the increased fees.

Because this rulemaking increases these fees, the Department expects an increase in the total amount of money applicants pay for plan review; landfill owners and operators pay for annual registration, facility owners pay for the receipt of special waste and special waste handlers pay for the management of special waste at in-state facilities that are not under the jurisdiction of the Department. These costs may be passed on to consumers. Table 1 compares the fees before this rulemaking with the fees after this rulemaking.

Table 1. Fees before this rulemaking compared to fees after this rulemaking

Fee	Rate before rulemaking		Rate while rule is effective	
New solid waste facility plan review fee for municipal solid waste landfill (MSWLF)	Initial	\$ 5,936.00	Initial	\$ 11,872.00
	Maximum	\$56,900.00	Maximum	\$170,700.00
New solid waste facility plan review fee for construction and demolition (C&D) landfill and other non-MSWLF	Initial	\$ 2,987.00	Initial	\$ 5,974.00
	Maximum	\$35,000.00	Maximum	\$105,000.00

Fee	Rate before rulemaking	Rate while rule is effective
New solid waste facility plan review fee for other solid waste facilities	Initial \$ 1,609.00 Maximum \$23,800.00	Initial \$ 3,218.00 Maximum \$ 71,400.00
New solid waste facility plan review fee for special waste management plan component	Initial \$ 556.00 Maximum \$ 3,700.00	Initial \$ 1,112.00 Maximum \$ 11,100.00
Plan review fee for change to solid waste facility plan for MSWLF	Initial \$ 766.00 Maximum \$28,400.00	Initial \$ 1,532.00 Maximum \$ 85,200.00
Plan review fee for change to solid waste facility plan for C&D landfill and other non-MSWLF	Initial \$ 597.00 Maximum \$17,500.00	Initial \$ 1,194.00 Maximum \$ 52,500.00
Plan review fee for change to solid waste facility plan for other solid waste facilities	Initial \$ 322.00 Maximum \$11,900.00	Initial \$ 644.00 Maximum \$ 35,700.00
Plan review fee for change to special waste management plan component	Initial \$ 278.00 Maximum \$ 1,800.00	Initial \$ 556.00 Maximum \$ 5,400.00
Plan review fee for update of demonstration of financial responsibility	Initial \$ 278.00 Maximum \$ 1,800.00	Initial \$ 556.00 Maximum \$ 5,400.00
Solid waste facility plan review fee for closure of MSWLF	Initial \$ 1,379.00 Maximum \$15,000.00	Initial \$ 2,758.00 Maximum \$ 45,000.00
Plan review fee for closure of C&D landfill and other non-MSWLF	Initial \$ 1,532.00 Maximum \$16,000.00	Initial \$ 3,064.00 Maximum \$ 48,000.00
Plan review fee for closure of other solid waste facilities	Initial \$ 1,226.00 Maximum \$18,300.00	Initial \$ 2,452.00 Maximum \$ 54,900.00
Plan review fee for closure of special waste management plan	Initial \$ 111.00 Maximum \$ 700.00	Initial \$ 222.00 Maximum \$ 2,100.00

Fee	Rate before rulemaking	Rate while rule is effective
component		
Solid waste facility plan review hourly rate	\$58.81	\$105.00
Landfill registration fees for solid waste landfills that serve less than 10,000 people	\$500.00	\$1,000.00
Landfill registration fees for solid waste landfills that serve at least 10,000 people but less than 25,000 people	\$750.00	\$1,500.00
Landfill registration fees for solid waste landfills that serve at least 25,000 people but less than 50,000 people	\$1,000.00	\$2,000.00
Landfill registration fees for solid waste landfills that serve at least 50,000 people but less than 100,000 people	\$2,000.00	\$4,000.00
Landfill registration fees for solid waste landfills that serve at least 100,000 people but less than 200,000 people	\$3,000.00	\$6,000.00
Landfill registration fees for solid waste landfills that serve 200,000 people or more	\$5,000.00	\$10,000.00
Landfill registration fees for solid waste landfills that are open to the public and that accept demolition waste	\$1,500.00	\$3,000.00
Landfill registration fees for solid waste landfills that are	\$1,500.00	\$3,000.00

Fee	Rate before rulemaking	Rate while rule is effective
closed to the public and that accept nonhazardous waste		
Special waste management fee maximums	Not more than \$2.00 per ton or \$20,000 per generator site per year	Not more than \$4.00 per ton or \$40,000 per generator site per year
Special waste management fee rates	66¢ per cubic yard of uncompacted shredder residue; or \$1.50 per cubic yard of compacted shredder residue; or \$2.00 per ton	\$1.32 per cubic yard of uncompacted shredder residue; or \$3.00 per cubic yard of compacted shredder residue; or \$4.00 per ton

Table 2 shows the amount from each of these fees received during the 2007 – 2008 fiscal year and an estimate of the total that would be received during the 2008 – 2009 fiscal year under this rule. For the estimate, revenues from the solid waste facility plan review and special waste fee amounts were calculated on a nine month prorated basis. The revenues from the landfill registration fee were doubled from fiscal year 2008 figures. Table 2 shows the estimated revenues the Department expects will result from this rulemaking.

Table 2. Estimated revenues from new fee structure

Fee description	Amount received during the 2007 – 2008 fiscal year (rounded to the nearest dollar)	Estimate of the amount to be received during the 2008 – 2009 fiscal year under this rule (rounded to the nearest dollar)
Solid Waste Facility Plan Review Fee authorized by A.R.S. § 49-762.03(F) and set forth in R18-13-702(A)	\$127,997.00	\$192,728.00
Landfill Registration Fee	\$134,750.00	\$269,500.00

set forth in A.R.S. § 49-747		
Special Waste Management Fee authorized and capped by A.R.S. § 49-855 and A.R.S. § 49-863 and set forth in A.A.C. R18-13-1307(F)	\$151,086.00	\$251,810.00
Sum of the fees proposed to be changed	\$413,833.00	\$714,038.00
Additional revenue (fiscal year 2008 – 2009 total minus fiscal year 2007 – 2008 total)		\$300,205.00

The Department does not track the number of entities who pay fees that are small businesses. The Department did not explore options for lessening the impact to small businesses. The Department does not believe that lessening the impact on small businesses would serve the intent of the legislature in passing the bill, and of the Governor in signing this bill into law.

The Department estimates \$300,205.00 additional revenues will be generated by these fee increases. Laws 2008, Ch. 291, §12 allows that Department to generate \$600,000.00 from increased fees. The Department may make additional fee increases under Laws 2008, Ch. 291, § 12 that are not addressed in this rulemaking. The amounts in this paragraph are rounded to the nearest dollar.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

Not applicable. According to Laws 2008, § 12, Department rulemakings to raise fees are exempt until one year from the effective date of Laws 2008, § 12 (which effective date is

September 26, 2008), from the rulemaking requirements of A.R.S. Title 41, Chapter 6, including the requirement for public notice and comment described in A.R.S. § 41-1023.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

Not applicable

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT

ARTICLE 26. BUDGET RECONCILIATION FEES

Section

R18-13-2601. Effective Date

R18-13-2602. Solid Waste Facility Plan Review Fees

R18-13-2603. Landfill Registration Fees

R18-13-2604. Special Waste Disposal Fees

ARTICLE 26. BUDGET RECONCILIATION FEES

R18-13-2601. Effective Date

This Article is effective from the date and time affixed by the Secretary of State upon filing pursuant to A.R.S. § 41-1032(A)(3) until June 30, 2009.

R18-13-2602. Solid Waste Facility Plan Review Fees

- A.** The initial fees set forth in subsection (B) apply to all initial solid waste facility plan review applications received from the effective date of this Article through June 30, 2009. The maximum fees set forth in subsection (B) apply to solid waste plan review services rendered from the effective date of this Article through June 30, 2009. The hourly rate set forth in subsection (C) applies to solid waste facility plan review services rendered from the effective date of this Article though June 30, 2009.
- B.** The solid waste facility plan review fee amounts set forth in R18-13-702(A), Schedules A, B and C shall be replaced with the amounts set forth in Schedules A, B and C of this subsection.

Schedule A	
New - Solid Waste Facility Plan Review Fees	
	<u>Initial</u> <u>Maximum</u>

<u>Solid Waste Facilities Plans:</u>	
<u>MSWLF</u>	<u>\$11,872.00 \$170,700.00</u>
<u>C & D Landfill and Other Non-</u>	<u>\$ 5,974.00 \$105,000.00</u>
<u>MSWLF</u>	<u>\$ 3,218.00 \$ 71,400.00</u>
<u>Other Solid Waste Facilities</u>	
<u>Special Waste Management Plan</u>	
<u>Component</u>	<u>\$ 1,112.00 \$ 11,100.00</u>

<u>Schedule B</u>		
<u>Change and Update of Demonstration of Financial Responsibility - Solid Waste Facility Plan Review Fees</u>		
	<u>Initial</u>	<u>Maximum</u>
<u>Change to Solid Waste Facilities Plans:</u>		
<u>MSWLF</u>	<u>\$1,532.00</u>	<u>\$85,200.00</u>
<u>C & D Landfill and Other Non-MSWLF</u>	<u>\$1,194.00</u>	<u>\$52,500.00</u>
<u>Other Solid Waste Facilities</u>	<u>\$ 644.00</u>	<u>\$35,700.00</u>
<u>Change to Special Waste Management</u>		
<u>Plan Component</u>	<u>\$ 556.00</u>	<u>\$5,400.00</u>
<u>Update of Demonstration of Financial</u>		
<u>Responsibility</u>	<u>\$ 556.00</u>	<u>\$5,400.00</u>

<u>Schedule C</u>		
<u>Closure - Solid Waste Facility Plan Review Fees</u>		
-	<u>Initial</u>	<u>Maximum</u>
<u>Solid Waste Facilities Plans:</u>		
<u>MSWLF</u>	<u>\$2,758.00</u>	<u>\$45,000.00</u>
<u>C & D Landfill and Other Non-</u>	<u>\$3,064.00</u>	<u>\$48,000.00</u>
<u>MSWLF</u>	<u>\$2,452.00</u>	<u>\$54,900.00</u>
<u>Other Solid Waste Facilities</u>		

<u>Special Waste Management Plan</u>	<u>\$ 222.00</u>	<u>\$ 2,100.00</u>
<u>Component</u>		

C. The solid waste facility plan review fee hourly rate set forth in R18-13-702(F) shall be replaced with the hourly rate of \$105.00.

R18-13-2603. Landfill Registration Fees

A. The fees set forth in this Section apply to landfill registration fees due from the effective date of this Article through June 30, 2009.

B. The landfill registration fee amounts set forth in A.R.S. § 49-747 shall be replaced with the amounts in this Section.

C. At the time of registration the owner of a solid waste landfill shall pay to the department an annual fee for each site registered which is determined according to the population that the landfill serves based on Schedule A of this subsection.

<u>Schedule A</u>	
<u>Solid Waste Landfill Annual Registration Fee</u>	
<u>Landfill Description</u>	<u>Fee</u>
<u>Solid waste landfills that serve fewer than 10,000 people</u>	<u>\$1,000.00</u>
<u>Solid waste landfills that serve at least 10,000 people but less than 25,000 people</u>	<u>\$1,500.00</u>
<u>Solid waste landfills that serve at least 25,000 people but less than 50,000 people</u>	<u>\$2,000.00</u>
<u>Solid waste landfills that serve at least 50,000 people but less than 100,000 people</u>	<u>\$4,000.00</u>
<u>Solid waste landfills that serve at least 100,000 people but less than 200,000 people</u>	<u>\$6,000.00</u>

<u>Solid waste landfills that serve 200,000 people or more</u>	<u>\$10,000.00</u>
<u>Solid waste landfills that are open to the public and that accept demolition waste</u>	<u>\$3,000.00</u>
<u>Solid waste landfills that are closed to the public and that accept nonhazardous waste</u>	<u>\$3,000.00</u>

R18-13-2604. Special Waste Management Fee

- A.** The fees set forth in this Section apply to special waste management fees paid under A.R.S. §§ 49-855 and 49-863 for special wastes received from the effective date of this Article through June 30, 2009.
- B.** The special waste management fee maximums set forth in A.R.S. § 49-855 shall be replaced with the amounts in subsection C, and the special waste management fee amounts set forth in A.A.C. R18-13-1307(F) shall be replaced with the amounts in subsection D.
- C.** The fee for special waste established pursuant to A.R.S. § 49-855 shall be not more than \$4.00 per ton and not more than \$40,000.00 per generator site per year for special waste that is transported to a facility in this state for treatment, storage or disposal.
- D.** The owner or operator of a special waste facility shall pay, to the Department, the fees required by A.R.S. §§ 49-855 and 49-863 in the amount of \$1.32 per cubic yard of uncompacted shredder residue, \$3.00 per cubic yard of compacted shredder residue received or \$4.00 per ton.